

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB405)

Received: **09/11/2009**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Kelda Helen Roys (608) 266-5340**

By/Representing: **Emily McWilliams**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Roys@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Prohibit sale of polycarbonate baby bottles containing bisphenol A

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

<END>

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				9/14			
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3019

Sundberg, Christopher

From: McWilliams, Emily
Sent: Friday, September 11, 2009 11:32 AM
To: Sundberg, Christopher
Subject: FW: BPA Draft bill language

Attachments: Bottle edit.doc

Dear Chris,

Rep. Roys and I noticed that you did not integrate the below changes into the Assembly version of the BPA bill when it was an LRB, so now AB 405 is different from SB 271 (I italicized the changes we requested below). I think our only option to make this change now is to introduce an amendment to the bill, is that right? If so, would you mind drafting an amendment for us to reflect the changes specified below (i.e. to reconcile the Assembly and Senate versions of this bill)?

Thanks very much, Chris. Hope you have a great weekend!

Emily

From: Kelly, Jessica
Sent: Tuesday, August 11, 2009 3:42 PM
To: Sundberg, Christopher
Cc: McWilliams, Emily
Subject: FW: BPA Draft bill language

Chris,

I received these changes below in the word document to LRB 1837/3 from DATCP.

Senator Lassa is fine with the changes, but I was wondering if you could let me know for (2A), (2B) and (4) if DATCP has this type of language anywhere else in the statutes and what exactly this allows them to do. Also, I'm wondering if you could tell me what would happen under (4) in DATCP's changes if the seller refuses to comply with an order. Does it go to the DA?

Additionally, Julie and Representative Roys would like to change the language to p.2 line 6 'empty BABY bottle or spill-proof cup PRIMARILY intended by the manufacturer for use by a child 5 years of age or younger.

Julie and Kelda would also like it spelled out in the bill language that the entity that is issued the fine if BPA bottles are in Wisconsin is the manufacturer or the wholesaler (we want to protect retailers, store managers, cashiers, etc).

I thought it was also worth mentioning that at one point I know we wanted to be "silent" on if the fine was per bottle sold or per instance and leave it up to DATCP. My coworker told me that while working on another bill with DATCP surrounding fines, the Department stated that if we DO NOT specify in statutes how DATCP issues fines, then the Department could be subject to a lawsuit and the law could be shot down. I will verify this with DATCP and cc you on the email.

Thanks.

From: Reinen, Michelle J - DATCP [<mailto:Michelle.Reinen@Wisconsin.gov>]
Sent: Monday, August 10, 2009 3:51 PM
To: Kelly, Jessica
Cc: Jenkins, Janet A - DATCP
Subject: BPA Draft bill language



Bottle edit.doc (22
KB)

Jessica,

The group here took a look at the latest draft for BPA.

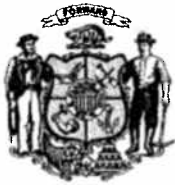
Attached is our preference in language - the underlined sections show our suggested additions in language. We also changed section 4, but I see that the language wasn't lined through, just deleted. What we suggest is to remove the beginning portion of the 1st sentence - no need to determine it is hazardous - the law does that by banning it.

Please let me know if you have questions.

Michelle

Michelle Reinen
Program & Planning Analyst
Division of Trade & Consumer Protection
608-224-5160
michelle.reinen@wi.gov

In: 9/11/09 Wanted: soon



State of Wisconsin
2009 - 2010 LEGISLATURE

ASA

TO AB 405

50120/1

LRB-18374

CTS:jld&wlj:jf

stays

~~2009 SENATE BILL 271~~

d-note

August 21, 2009 - Introduced by Senators LASSA, CARPENTER, KAPANKE, HANSEN, WIRCH, LEHMAN, ROBSON, RISSER and TAYLOR, cosponsored by Representatives ROYS, MOLEPSKE JR., MASON, BENEDICT, BROOKS, BERCEAU, HUBLER, CULLEN, MILROY, PASCH, TURNER, BLACK, JORGENSEN, PARISI, STEINBRINK, VRUWINK, DANOU, SOLETSKI, RICHARDS, SPANBAUER and CLARK. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

Regen

- 1 AN ACT *to create* 20.115 (1) (ip), 100.335 and 814.75 (1d) of the statutes; **relating**
- 2 **to:** prohibiting the manufacture and sale at wholesale of certain baby bottles
- 3 and cups for children that contain bisphenol A, creating labeling requirements,
- 4 making an appropriation, and providing penalties. ✓

Analysis by the Legislative Reference Bureau

✓ This bill prohibits manufacturing or selling, or offering to sell, at wholesale an empty baby bottle or spill-proof cup primarily intended for use by a child five years of age or younger (child's container) if the child's container contains bisphenol A. A manufacturer or wholesaler must ensure that a child's container sold or offered for sale in this state is conspicuously labeled as not containing bisphenol A. The bill does not apply to the sale of a used child's container. Under the bill, the Department of Agriculture, Trade and Consumer Protection (DATCP) may, after a hearing, order a manufacturer or wholesaler of a container that violates the provisions of the bill to recall or repair the container.

A person who violates the provisions of the bill may be fined up to \$5,000, imprisoned in the county jail for up to one year, or both, and may also be required to forfeit \$100 to \$10,000 for each violation. Each container manufactured, sold, or offered for sale in violation of the provisions of the bill constitutes a separate violation. If a court imposes a fine or forfeiture, the court must also impose a surcharge equal to 50 percent of the amount of the fine or forfeiture. Under the bill, surcharges are appropriated to DATCP for administering and enforcing the provisions of the bill.

substitute amendment ✓

SENATE BILL 271

✓ Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (1) (ip) ✓ of the statutes is created to read:

2 20.115 (1) (ip) *Bisphenol A enforcement*. All moneys received under s. 100.335
3 (6), for enforcement and administration of s. 100.335.

4 **SECTION 2.** 100.335 ✓ of the statutes is created to read:

5 **100.335 Child's containers containing bisphenol A.** (1) In this section,
6 "child's container" means an empty baby bottle or spill-proof cup primarily intended
7 by the manufacturer for use by a child 5 years of age or younger.

8 (2) No person may manufacture or sell, or offer for sale, at wholesale in this
9 state a child's container that contains bisphenol A. A manufacturer or wholesaler
10 who sells or offers for sale in this state a child's container shall ensure the container
11 is conspicuously labeled as not containing bisphenol A.

12 (3) (a) The department may commence an action in the name of the state to
13 restrain by temporary or permanent injunction a violation of this section.

14 (b) The department or a district attorney may commence an action in the name
15 of the state to recover a forfeiture to the state of not less than \$100 nor more than
16 \$10,000 for each violation of this section.

17 (c) A person who violates this section may be fined not more than \$5,000,
18 imprisoned for not more than one year in the county jail, or both.

SENATE BILL 271

1 (d) For purposes of this subsection, each child's container manufactured, sold,
2 or offered for sale in violation of this section constitutes a separate violation.

3 (4) The department may, after notice and opportunity for hearing under s.
4 93.18, order a manufacturer or seller of a child's container in violation of this section
5 to recall the container or to repair any defects in a container that has been sold. No
6 person may refuse to comply with an order under this subsection.

7 (5) This section does not apply to the sale of a used child's container.

8 (6) If a court imposes a fine or forfeiture for a violation of this section, the court
9 shall impose a bisphenol A surcharge under ch. 814 equal to 50 percent of the amount
10 of the fine or forfeiture.

11 **SECTION 3.** 814.75 (1d) ^x of the statutes is created to read:

12 814.75 (1d) The bisphenol A surcharge under s. 100.335.

13 **SECTION 4. Effective date.**

14 (1) This act takes effect on the 90th day beginning after publication.

15 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU


date

LRBs0120/1dn

CTS: ^:...

jld

Representative [✓]Roys:

* This substitute amendment is substantively identical to SB 271. 

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
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christopher.sundberg@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0120/1dn
CTS:jld:ph

September 14, 2009

Representative Roys:

This substitute amendment is substantively identical to SB-271.

Christopher T. Sundberg
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